

### **31 KAR 6:020. Provisional voting.**

RELATES TO: KRS 117.015(1), 117.275, 117.305, 42 U.S.C. 15482

STATUTORY AUTHORITY: KRS 117.015(1), 42 U.S.C. 15482, sec. 302(d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1) authorizes the Kentucky State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties in the administration of the election laws. The Help America Vote Act of 2002, 42 U.S.C. 15482, Section 302(d) requires the state to comply with the provisions of that section concerning provisional voting in elections for federal offices. This administrative regulation establishes procedures for provisional voting.

Section 1. Definitions. (1) "Provisional ballot" means a ballot cast in an election for federal office by an individual who resides in a voting precinct but whose eligibility to vote is in question or is not determinable on election day.

(2) "Provisional ballot inner envelope" means the envelope with the words "provisional ballot" printed on the front.

(3) "Provisional ballot outer envelope" means the envelope with the following printed on the front:

- (a) Precinct election officer checklist of circumstances for issuing a provisional ballot;
- (b) Provisional ballot affirmation; and
- (c) The county board of elections checklist for indicating whether the ballot was counted and if not counted the reason why.

Section 2. Applicability. This administrative regulation shall be applicable to special, primary, and general elections for the federal elective offices of President/Vice President, United States Senator, and United States House of Representatives.

Section 3. Precinct Election Officer Notice. (1) A precinct election officer who cannot confirm a potential voter's eligibility to vote on election day shall notify the individual of the option of appearing before the county board of elections to dispute eligibility or voting a provisional ballot in that precinct if the individual resides at a residence within the geographical boundaries of the precinct.

(2) If the individual chooses to cast a provisional ballot, then the individual shall not be eligible to vote in any other manner.

Section 4. Procedures and Circumstances for Casting a Provisional Ballot. (1) The individual shall sign a provisional ballot precinct signature roster, SBE 35, which contains the individual's name, address, signature, date of birth, political party affiliation, identification type, and precinct officer initials.

(2) The precinct election officer shall check the appropriate box next to the circumstance for issuing the provisional ballot.

(3) The circumstances for issuing the provisional ballot:

- (a) Voter whose name does not appear on the precinct roster and whose registration status cannot be determined by the precinct officer;
- (b) Voter whose name does not appear on the precinct roster and who has been verified as ineligible to vote;
- (c) Voter who does not have identification;
- (d) Voter who is voting as a result of a federal or state court order or any order under state law in effect ten (10) days prior to election day which extends polling hours; or

(e) Voter has been challenged by all four (4) precinct election officers.

(4) The precinct election officer shall give the individual the provisional ballot, a provisional ballot inner envelope, SBE 39, and the provisional ballot outer envelope, SBE 38.

(5) To cast a provisional ballot, an individual shall execute the written affirmation on the provisional ballot outer envelope before a precinct officer at the voting place declaring the individual is a registered voter in the county and resides within the geographical boundaries of the precinct. The written affirmation executed by the individual shall state:

(a) The individual's name;

(b) Current residential address;

(c) Political party affiliation;

(d) That the individual is a registered voter in the county and resides in the precinct;

(e) That the individual knows of no legal reason to prevent his or her vote from being cast and counted;

(f) That the individual has not voted and shall not vote in another precinct or by absentee ballot in this state during this election;

(g) That the individual understands that any person who falsely signs and verifies any form requiring verification shall be guilty of perjury and subject to penalties therefore; and

(h) That the individual further understands that if he or she executes the affirmation and is not a registered voter at the current address stated, the individual has committed a criminal act.

(6) The precinct election officer shall direct the individual to a private voting area in which the individual shall cast his or her provisional ballot.

(7)(a) An individual may spoil up to two (2) provisional ballots and shall not be issued more than a total of three (3) provisional ballots.

(b) Spoiled ballots shall be placed in the provisional ballot inner envelope, sealed by the individual, and returned to a precinct election officer who shall mark on the provisional ballot stub of the issued ballot and on the front of the envelope "spoiled ballot".

(8) The individual shall place the voted provisional ballot in the provisional ballot inner envelope and seal. The individual shall place the sealed provisional ballot inner envelope in the provisional ballot outer envelope and seal.

(9) The individual shall return the sealed provisional ballot outer envelope to the precinct election officer.

(10) The precinct election officer, upon receiving the sealed provisional ballot outer envelope from the individual, shall give the individual the provisional ballot information sheet, SBE 36, which explains the individual's right to contact their local county clerk to learn if the provisional ballot was counted, and if not counted, the reason why.

(11) A precinct election officer shall place sealed provisional ballot outer envelopes and sealed spoiled provisional ballot inner envelopes in a container and transmit to the county board of elections.

(12) The county board of elections shall determine the eligibility to vote of each individual casting a provisional ballot, in accordance with KRS Chapters 116 to 118 and 31 KAR Chapters 2 to 6.

(13) If the county board of elections determines the individual is eligible to vote in the precinct in the election, the vote shall be counted and the county board shall so indicate on the provisional ballot outer envelope.

(14) If the county board of elections determines the individual is ineligible to vote in the precinct in the election, the vote shall not be counted and the county board shall so indicate on the provisional ballot outer envelope.

Section 5. Provisional Ballot During Extension of Time to Close Polls. (1) An individual who votes in an election for federal office as a result of a federal or state court order or any other order extending the time established for closing the polls by a state law in effect ten (10) days before the date of that election may only vote in that election by casting a provisional ballot.

(2) A provisional ballot cast during an extension of the time for closing the polls required by orders described in this section shall be separated and held apart from other provisional ballots cast by those not affected by the order.

Section 6. Responsibilities. (1) The county board of elections shall count all eligible provisional ballots.

(2) The county board of elections shall begin counting provisional ballots no later than 9 a.m. prevailing time on the day following the election.

(3) The provisional ballot count shall be certified by the county board of elections on the Certification Official Count and Record of Election Totals prescribed by the State Board of Elections in 31 KAR 4:030, which contains the office name, name of candidate, machine vote totals, absentee machine vote totals, paper absentee ballot vote totals, provisional ballot vote totals, and total votes. This form shall be certified to the Secretary of State's Office not later than 12 p.m., prevailing time, on the Friday following the election. For special elections this form shall be certified to the Secretary of State's Office not later than 12 p.m., prevailing time, on the day following the election.

(4) Upon completion of a recanvass of vote totals, the county board of elections shall report recanvassed vote totals on the Recanvass of Official Count and Record of Election Totals form, prescribed by the State Board of Election in 31 KAR 4:070, which contains the office name, name of candidate, machine vote totals, absentee machine vote totals, paper absentee ballot vote totals, provisional ballot vote totals, and total votes. The recanvassed vote totals shall be certified and immediately reported to the Secretary of State's Office.

(5) County clerks shall cause provisional ballots to be printed. The provisional ballots shall be printed with a ballot stub that will be consecutively numbered with a place for voter name, precinct election officer initials, and marked by precinct officers if it was a spoiled ballot.

(6) County clerks shall post instructions in each precinct on how to cast a provisional ballot, in accordance with Section 4 of this administrative regulation.

(7)(a) For general and special elections, a minimum of twenty (20) provisional ballots and other applicable forms shall be sent to each precinct.

(b) For primary elections, a minimum of twenty (20) provisional ballots and other applicable forms shall be sent for each party to each precinct.

(8) After the county board of elections has completed its investigation of each provisional ballot and marked the face of the provisional ballot outer envelope appropriate to its findings, the county clerk shall photocopy the face of each outer envelope for future access to convey to the individual whether or not the ballot was counted, and if not counted, the reason why, and shall immediately enter the information in the Statewide Voter Registration Database.

(9) Provisional ballots and all envelopes from a general election shall be locked for thirty (30) days and retained for twenty-two (22) months. Provisional ballot and all envelopes from a primary or special election shall be locked for ten (10) days and retained for twenty-two (22) months.

(10) A provisional ballot accountability statement for provisional ballots, SBE 37, shall be sent to each precinct and returned to the county board of elections, which contains the county name, precinct name, number of ballots issued, ballot stub numbers, number of provisional ballots used, number of provisional ballots unused, number of provisional ballots spoiled and place for the signature of all four (4) precinct election officers.

(11) The chairman of the county board of elections shall file a completed "County Board of Elections Provisional Ballots Issued to Voters and Counted" form, SBE 54C, with the State Board of Elections within ten (10) days after any special, primary, or general election for the federal elective offices of President/Vice President, United States Senator, and United States House of Representatives.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Provisional Ballot Precinct Signature Roster - SBE 35", (6/17);
- (b) "Provisional Ballot Informational Sheet - SBE 36", (9/04);
- (c) "Provisional Ballot Accountability Sheet - SBE 37", (12/05);
- (d) "Provisional Ballot Outer Envelope - SBE 38", (6/17);
- (e) "Provisional Ballot Inner Envelope - SBE 39", (11/03); and
- (f) "County Board of Elections Provisional Ballots Issued to Voters and Counted - SBE 54C" (2/04).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. (30 Ky.R. 1882, Am. 2016; eff. 3-18-2004; 32 Ky.R. 1317; 1610; eff. 3-31-2006; 44 Ky.R.114; eff. 10-6-2017.)